Slaughter v. Jones Day Doc. 14

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

AVA SLAUGHTER,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION NO. H-05-3455
JONES DAY,	§	
Defendant.	§	

DEFENDANT JONES DAY'S AFFIRMATIVE AND OTHER DEFENSES AND ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant Jones Day ("Jones Day" or "Defendant") respectfully files this, its Affirmative and Other Defenses and Answer to Plaintiff's First Amended Complaint, and would respectfully show the Court the following:

AFFIRMATIVE AND OTHER DEFENSES

Defendant pleads the following affirmative and other defenses, but does not assume the burden of proof except to the extent required on pure affirmative defenses:

1. Plaintiff's First Amended Complaint fails, in whole or in part, to state a cause of action against Defendant upon which relief can be granted and should therefore be dismissed pursuant to Fed. R. Civ. P. 12(b)(6);

2. Subject to further discovery, Defendant asserts that Plaintiff has not fulfilled all conditions precedent to the institution of this lawsuit, administrative prerequisites, and applicable statutes of limitation;

3. Plaintiff has failed to mitigate her damages, if any;

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4. Plaintiff's claims for damages are capped or limited in accordance with applicable law;

5. Plaintiff's damages are limited by the doctrine of after-acquired evidence;

6. Plaintiff's claims for compensatory and punitive damages are limited by the provisions and maximum amount set forth in 42 U.S.C. § 1981(a);

7. Plaintiff's claim for exemplary damages in this case violates the provisions of the Fourteenth Amendment of the United States Constitution; Article I, §§ 13 and 19 of the Texas Constitution;

8. Plaintiff's claim for exemplary damages in this case is subject to the damage cap provided in Tex. Lab. Code § 21.2585(d);

9. Plaintiff's claims are barred, in whole or in part, because any actions Defendant took with respect to Plaintiff were based on legitimate, non-discriminatory and non-retaliatory reasons, and Defendant would have taken the same actions regardless of any other alleged reasons;

10. Plaintiff's alleged losses and damages, if any, are the result of, and directly related to, Plaintiff's own conduct, actions, and/or failure to act, and not of Defendant's conduct, actions or failure to act;

11. All actions taken by Defendant with respect to Plaintiff were justified, in good faith, and without malice;

12. Defendant denies the allegations contained in Plaintiff's First Amended Complaint. However, Defendant affirmatively pleads that it has in place an established anti-discrimination policy and an established anti-harassment policy, which include a complaint

procedure to prevent and/or correct any alleged discrimination, harassment, retaliation, or other unlawful conduct. Plaintiff unreasonably failed to take advantage of this procedure;

13. Defendant denies the allegations contained in Plaintiff's First Amended Complaint and denies that it engaged in any unlawful conduct. However, Defendant affirmatively pleads that to the extent Plaintiff has alleged any unlawful conduct by Defendant, Defendant exercised reasonable care to prevent and properly correct such alleged behavior or conduct;

14. Defendant is not liable for exemplary damages in this case because any alleged discriminatory employment decisions are contrary to Defendant's good-faith efforts to comply with the anti-discrimination laws, including but not limited to the Title VII of the Civil Rights Act of 1964, as amended, the Texas Commission on Human Rights Act, and 42 U.S.C. § 1981;

Subject to further discovery, Defendant asserts the defenses of ratification, waiver, estoppel, and/or latches.

ORIGINAL ANSWER

Subject to the above and foregoing affirmative and other defenses, Defendant pleads as follows to the specific allegations of Plaintiff's First Amended Complaint:

1. With respect to Paragraph 1.1 of Plaintiff's First Amended Complaint, Defendant acknowledges generally the nature of Plaintiff's suit against it, but denies that it discriminated or retaliated against Plaintiff in the course of her employment and denies that Plaintiff is entitled to any of the requested relief.

2. Defendant admits that Plaintiff Ava Slaughter is an African-American female, as alleged in Paragraph 2.1 of Plaintiff's First Amended Complaint, but, at this time, is without sufficient information to admit or deny the remaining allegations in this paragraph and therefore denies the same.

2.2 Defendant admits the allegations contained in Paragraph 2.2 of Plaintiff's First Amended Complaint.

2.3 Defendant admits the allegations contained in Paragraph 2.3 of Plaintiff's First Amended Complaint.

2.4 Defendant admits the allegations contained in Paragraph 2.4 of Plaintiff's Amended Complaint but denies that it engaged in any unlawful conduct and denies that Plaintiff is entitled to any recovery.

3.1 Defendant admits the allegations contained in Paragraph 3.1 of Plaintiff's First Amended Complaint.

3.2 Defendant admits the allegations contained in Paragraph 3.2 of Plaintiff's First Amended Complaint.

3.3 Defendant admits that Plaintiff was employed as Director of Information Technology at Bayko Gibson Carnegie Hagan & Schoonmaker, L.L.P. ("Bayko Gibson") and admits that Bayko Gibson combined with Jones Day in January 2001, but denies that Plaintiff's title was "GIS Manager" and denies the remaining allegations contained in Paragraph 3.3 of Plaintiff's First Amended Complaint.

3.4 Defendant denies the allegations contained in Paragraph 3.4 of Plaintiff's First Amended Complaint.

3.5 Defendant denies the allegations contained in Paragraph 3.5 of Plaintiff's First Amended Complaint.

3.6 Defendant admits that Plaintiff was listed as the GIS contact for Defendant's Houston office on certain GIS contact lists but denies that Plaintiff was ever employed as GIS

Manager and denies the remaining allegations contained in Paragraph 3.6 of Plaintiff's First Amended Complaint.

3.7 Defendant admits that the October 17, 2002 GIS Management Team listing identified Natalie Anton as "Regional Manager" and Sara White as "Acting Regional Manager" and that Plaintiff was not identified as an employee serving in an "Acting" capacity, but denies that Plaintiff was ever employed as GIS Manager or Acting GIS Manger and denies the remaining allegations contained in Paragraph 3.7 of Plaintiff's First Amended Complaint.

3.8 Defendant admits that the document titled "GIS North America Office Address Listing GIS Manager," dated December 11, 2002, identified Sara White as "Regional Manager (acting)" and listed Plaintiff as "Manager" for the Houston office, but avers that the reference to Plaintiff as "Manager" was inaccurate and denies the remaining allegations contained in Paragraph 3.8 of Plaintiff's First Amended Complaint.

3.9 Defendant admits that Plaintiff attended the 2002 annual GIS meeting in Cleveland, Ohio, and that Defendant reimbursed Plaintiff for her expenses in traveling to the meeting. Defendant is without information sufficient to admit or deny the remaining allegations contained in Paragraph 3.9 of Plaintiff's First Amended Complaint and therefore denies the same.

3.10 Defendant admits that in September 2003, Kevin Richardson ("Richardson"), Houston Office Administrator, informed Plaintiff that Jones Day would be creating a GIS Manager position in the Houston office, but denies the remaining allegations contained in Paragraph 3.10 of Plaintiff's First Amended Complaint.

3.11 Defendant denies the allegations contained in Paragraph 3.11 of Plaintiff's First Amended Complaint and avers that Plaintiff has never been employed as GIS Manager.

3.12 Defendant denies the allegations contained in Paragraph 3.12 of Plaintiff's First Amended Complaint.

3.13 Defendant admits that Plaintiff applied for the position of GIS Manager but denies the remaining allegations contained in Paragraph 3.13 of Plaintiff's First Amended Complaint. Defendant avers that Plaintiff has never been employed as GIS Manager or fulfilled the duties of GIS Manager.

3.14 Defendant admits that Plaintiff spoke to Stacey Brown ("Brown"), Houston Human Resources Coordinator, and informed Brown that Plaintiff wanted to list her current position as "GIS Manager" on her resume. Defendant admits that Brown advised Plaintiff to list her actual job title of "Technology Support Specialist" on her resume. Defendant denies the remaining allegations contained in Paragraph 3.14 of Plaintiff's First Amended Complaint.

3.15 Defendant admits that Plaintiff was not selected for the position of GIS Manager but denies the remaining allegations contained in Paragraph 3.15 of Plaintiff's First Amended Complaint. Defendant avers that Plaintiff has never been employed as GIS Manager or fulfilled the duties of GIS Manager.

3.16 Defendant admits that Jerri Del Riesgo ("Del Riesgo") was selected for the position of Houston GIS Manager but denies the remaining allegations contained in Paragraph 3.16 of Plaintiff's First Amended Complaint. Defendant avers that Plaintiff has never been employed as GIS Manager.

3.17 Defendant admits the allegations contained in Paragraph 3.17 of Plaintiff's First Amended Complaint.

3.18 Defendant admits that Plaintiff reported to Del Riesgo after Del Riesgo was promoted to Houston GIS Manager but denies the remaining allegations contained in Paragraph

3.18 of Plaintiff's First Amended Complaint. Defendant avers that Plaintiff has never been employed as GIS Manager.

3.19 Defendant admits the allegations contained in Paragraph 3.19 of Plaintiff's First Amended Complaint.

3.20 Defendant admits the allegations contained in Paragraph 3.20 of Plaintiff's First Amended Complaint.

3.21 Defendant admits the allegations contained in Paragraph 3.21 of Plaintiff's First Amended Complaint.

3.22 Defendant denies the allegations contained in Paragraph 3.22 of Plaintiff's First Amended Complaint, and avers that Plaintiff has never been employed as GIS Manager or fulfilled the duties of GIS Manager.

3.23 Defendant admits the allegations contained in Paragraph 3.23 of Plaintiff's First Amended Complaint but avers that Del Riesgo was promoted to the position of Houston GIS Manager.

3.24 Defendant admits the allegations contained in Paragraph 3.24 of Plaintiff's First Amended Complaint.

3.25 Defendant admits that when David Williams ("Williams"), Firm Human Resources Director and Counsel, and Brown met with Plaintiff via telephone conference to report the findings of Defendant's internal investigation of Plaintiff's complaint of discrimination, Plaintiff tape-recorded the conversation without Williams's or Brown's knowledge. Defendant is without sufficient information to admit or deny the remaining allegations contained in Paragraph 3.25 of Plaintiff's First Amended Complaint and therefore denies the same.

3.26 Defendant admits that Plaintiff provided a copy of the tape recording referenced in Paragraph 3.25 and its transcript to Defendant during the course of discovery in the instant lawsuit. Defendant is without sufficient information to admit or deny the remaining allegations contained in Paragraph 3.26 of Plaintiff's First Amended Complaint and therefore denies the same.

3.27 Defendant denies the allegations contained in Paragraph 3.27 of Plaintiff's First Amended Complaint.

3.28 Defendant admits that Del Riesgo resigned her position as Houston GIS Manager but denies the remaining allegations contained in Paragraph 3.28 of Plaintiff's First Amended Complaint.

3.29 Defendant denies the allegations contained in Paragraph 3.29 of Plaintiff's First Amended Complaint as pleaded, but admits that after Del Riesgo resigned, Plaintiff accessed and took copies of various Firm documents without authorization or approval.

3.30 Defendant is without information sufficient to admit or deny the allegations contained in Paragraph 3.30 of Plaintiff's First Amended Complaint and therefore denies the same.

3.31 Defendant denies the allegations contained in Paragraph 3.31 of Plaintiff's First Amended Complaint as pleaded, but admits that Plaintiff produced certain Firm documents to Defendant during the course of discovery in the instant lawsuit.

3.32 Defendant is without information sufficient to admit or deny the allegations contained in Paragraph 3.32 of Plaintiff's First Amended Complaint and therefore denies the same.

3.33 Defendant denies the allegations contained in Paragraph 3.33 of Plaintiff's First Amended Complaint as pleaded, but avers that Plaintiff was counseled that her actions in tape-recording a conversation without consent of all parties to the conversation and accessing and taking copies of various Firm documents without authorization or approval constituted violations of Firm policy.

3.34 Defendant denies the allegations contained in Paragraph 3.34 of Plaintiff's First Amended Complaint.

3.35 Defendant denies the allegations contained in Paragraph 3.36 of Plaintiff's First Amended Complaint.

4.1 In response to the allegations contained in Paragraph 4.1 of Plaintiff's First Amended Complaint, Defendant adopts and incorporates its Affirmative and Other Defenses and Answers to Paragraphs 1.1 through 3.35 above.

4.2 Defendant denies the allegations contained in Paragraph 4.2 of Plaintiff's First Amended Complaint.

4.3 Defendant denies the allegations contained in Paragraph 4.3 of Plaintiff's First Amended Complaint and avers that Plaintiff has never been employed as GIS Manager.

4.4 Defendant admits that Del Riesgo is white but denies the remaining allegations contained in Paragraph 4.4 of Plaintiff's First Amended Complaint. Defendant avers that Plaintiff has never been employed as GIS Manager.

4.5 Defendant denies the allegations contained in Paragraph 4.5 of Plaintiff's First Amended Complaint and avers that Plaintiff has never been employed as GIS Manager.

4.6 Defendant admits that Plaintiff reported to Del Riesgo after Del Riesgo was promoted to Houston GIS Manager but denies the remaining allegations contained in Paragraph 4.6 of Plaintiff's First Amended Complaint.

4.7 Defendant admits the allegations contained in Paragraph 4.7 of Plaintiff's First Amended Complaint.

4.8 Defendant denies the allegations contained in Paragraph 4.8 of Plaintiff's First Amended Complaint.

4.9 Defendant admits that Del Riesgo is white but denies the remaining allegations contained in Paragraph 4.9 of Plaintiff's First Amended Complaint. Defendant avers that Plaintiff has never been employed as GIS Manager.

4.10 Defendant denies the allegations contained in Paragraph 4.10 of Plaintiff's First Amended Complaint.

4.11 Defendant denies the allegations contained in Paragraph 4.11 of Plaintiff's First Amended Complaint.

4.12 Defendant denies the allegations contained in Paragraph 4.12 of Plaintiff's First Amended Complaint.

4.13 Defendant denies the allegations contained in Paragraph 4.13 of Plaintiff's First Amended Complaint.

5.1 In response to the allegations contained in Paragraph 5.1 of Plaintiff's First Amended Complaint, Defendant adopts and incorporates its Affirmative and Other Defenses and Answers to Paragraphs 1.1 through 4.13 above.

5.2 Defendant admits the allegations contained in Paragraph 5.2 of Plaintiff's First Amended Complaint.

5.3 Defendant admits the allegations contained in Paragraph 5.3 of Plaintiff's First Amended Complaint.

5.4 Defendant admits that when Williams and Brown met with Plaintiff via telephone conference to report the findings of Defendant's internal investigation of Plaintiff's complaint of discrimination, Plaintiff tape-recorded the conversation without Williams's or Brown's knowledge. Defendant is without sufficient information to admit or deny the remaining allegations contained in Paragraph 5.4 of Plaintiff's First Amended Complaint and therefore denies the same.

5.5 Defendant denies the allegations contained in Paragraph 5.5 of Plaintiff's First Amended Complaint as pleaded. Defendant avers that Plaintiff accessed and took copies of various Firm documents without authorization or approval.

5.6 Defendant admits that the action at issue occurred after Del Riesgo's resignation but denies the remaining allegations contained in Paragraph 5.6 of Plaintiff's First Amended Complaint.

5.7 Defendant denies the allegations contained in Paragraph 5.7 of Plaintiff's First Amended Complaint.

5.8 Defendant is without sufficient information to admit or deny the allegations contained in Paragraph 5.8 of Plaintiff's First Amended Complaint and therefore denies the same.

5.9 Defendant admits that Plaintiff's attorneys have produced certain materials provided to them by Plaintiff, but is without sufficient information to admit or deny the allegations contained in Paragraph 5.9 of Plaintiff's First Amended Complaint and therefore denies the same.

5.10 Defendant denies the allegations contained in Paragraph 5.10 of Plaintiff's First Amended Complaint as pleaded. Defendant avers that it is unable to identify the alleged "materials."

5.11 Defendant admits the allegations contained in Paragraph 5.11 of Plaintiff's First Amended Complaint.

5.12 Defendant denies the allegations contained in Paragraph 5.12 of Plaintiff's First Amended Complaint.

5.13 Defendant denies the allegations contained in Paragraph 5.13 of Plaintiff's First Amended Complaint.

5.14 Defendant denies the allegations contained in Paragraph 5.14 of Plaintiff's First Amended Complaint.

5.15 Defendant denies the allegations contained in Paragraph 5.15 of Plaintiff's First Amended Complaint.

5.16 Defendant denies the allegations contained in Paragraph 5.16 of Plaintiff's First Amended Complaint.

5.17 Defendant denies the allegations contained in Paragraph 5.17 of Plaintiff's First Amended Complaint.

5.18 Defendant acknowledges that Plaintiff seeks damages in the amount of reasonable attorney's fees and expenses but denies that Plaintiff is entitled to such relief and denies the remaining allegations contained in Paragraph 5.18 of Plaintiff's First Amended Complaint.

6.1 Defendant admits the allegations contained in Paragraph 6.1 of Plaintiff's First Amended Complaint.

6.2 Defendant admits the allegations contained in Paragraph 6.2 of Plaintiff's First Amended Complaint.

6.3 Defendant denies the allegations contained in Paragraph 6.3 of Plaintiff's First Amended Complaint and avers that Plaintiff has never been employed as GIS Manager.

6.4 Defendant denies the allegations contained in Paragraph 6.4 of Plaintiff's First Amended Complaint.

7. In response to the allegations contained in the paragraph entitled "Jury Trial Requiested," Defendant admits that Plaintiff has timely invoked her right to a trial by jury.

8. Defendant denies Plaintiff is entitled to any of the relief she seeks in her Prayer for Relief.

WHERE, PREMISES CONSIDERED, Defendant prays that Plaintiff's suit be dismissed with prejudice and denied in its entirety and that Defendant recover its costs of suit, reasonable attorneys' fees, and such other relief to which it may show itself to be justly entitled.

Dated: August __, 2006

Respectfully submitted,

/s/ Shauna Johnson Clark by permission
Kelley Edwards

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CERTIFICATE OF SERVICE

This pleading was served in compliance in compliance with Rule 5 of the Federal Rules of Civil Procedure via electronic transmission or by Certified Mail, Return Receipt Requested on this 18th day of August, 2006, to counsel listed below:

Mr. Thomas Padgett, Jr.
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/s/ Kelley Edwards
Kelley Edwards